

PT 98-4

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ROSEVILLE CHRISTIAN CHURCH

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket # 94-94-20

Parcel Index # 07-359-006-00

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. George Hennenfent appeared on behalf of the Roseville Christian Church (hereinafter referred to as the "Applicant")

Synopsis:

The hearing in this matter was held on February 21, 1997, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois to determine whether or not Warren County Parcel Index No. 07-359-006-00 qualified for exemption from real estate taxation for the 1994 assessment year.

Mr. Jan Van Arsdale, a trustee and deacon for the applicant, was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a religious or a charitable organization; secondly, whether the applicant owned this parcel during the 1994 assessment year; and lastly, whether the applicant used this parcel for religious or charitable purposes during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that

the applicant owned this parcel during the entire 1994 assessment year. Finally it is determined that the applicant used this parcel and the residence thereon, but not the garage, for religious purposes during the period January 1, 1994, through July 1, 1994. It is therefore recommended that this parcel and the house thereon be exempt for 50% of the 1994 assessment year. It is further recommended that the garage and the land on which it is located not be exempt for the 1994 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue did not qualify for exemption for the 1994 assessment year, was established by the admission in evidence of Department's Ex. Nos. 1 through 5.

2. On January 10, 1995, the Warren County Board of Appeals transmitted an Application for Property Tax Exemption To Board of Review, which had been filed by this applicant with the board on August 23, 1994, concerning this parcel for the 1994 assessment year, to the Department. (Dept. Ex. No. 2)

3. On December 22, 1995, the Department notified the applicant that it was denying the exemption of this parcel for the 1995 assessment year. (Dept. Ex. No. 3)

4. By a letter dated January 8, 1996, the applicant's attorney requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. Philip and Jean Adkisson donated the parcel here in issue and the house and garage located thereon to the applicant by a quitclaim deed dated December 17, 1993. (Tr. p. 8, Dept. Ex. No. 1D).

6. The applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois, on March 14, 1988. The purpose clause of the applicant's Articles of Incorporation do not appear in the copy of the Articles submitted at the hearing. The articles were recorded with the Warren County Clerk, and the book and page number of each page of the

articles was stamped thereon. A copy of Book 391 Page 284 which should have contained the purpose clause, was omitted from the exhibit submitted to the Department. (Appl. Ex. No. 1)

7. During 1994, the applicant had approximately 250 members and an average attendance of approximately 210. (Tr. p. 16)

8. During 1994, the applicant held worship services in its church building on Sunday mornings at 9:30 A.M. It also held worship services at 6:00 P.M. on Sunday evenings, except during the summer months. (Tr. p. 16)

9. This parcel is located approximately 150 feet from the church building. The area between the church building and this parcel is the church parking lot. (Tr. pp. 15 & 18)

10. Shortly after acquiring this parcel, the applicant began to use the residence on this parcel on a weekly basis for a junior high Sunday School class. That use continued until July 1, 1994. (Tr. pp. 10-12)

11. On July 2, 1994, Carla Oliver and her two children moved into the house on this parcel. They lived in this house until the end of February, 1995. (Tr. pp. 11 & 12)

12. Mrs. Oliver was a long time member of the applicant's church. Her children also attended applicant's church. (Tr. p. 14)

13. Mrs. Oliver did not pay rent to live in the house on this parcel. She did pay all of the utilities for the house. (Tr. pp. 12 & 17)

14. Carla Oliver and her children moved out of the house on this parcel, at the end of February, 1995. After the house was vacated, the applicant began to use it for the junior high Sunday School class again. (Tr. p. 15)

15. No one else has lived in this house other than Mrs. Oliver and her two children. (Tr. p. 14)

16. During the period January 1, 1994, through July 1, 1994, the garage on this parcel was vacant and not used. During the time that Carla Oliver lived in the house, she used the garage to store her belongings. Since Carla Oliver moved out of the house, the church van has been parked in the garage on this parcel. (Tr. pp. 10, 17 & 18)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-40 provides as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes,. . . and not leased or otherwise used with a view to profit, is exempt,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

Based on the foregoing findings of fact, I conclude that the applicant is a religious organization which owned the parcel here in issue during the entire 1994 assessment year.

I also conclude that the applicant used the house on this parcel for religious purposes during the period January 1, 1994 through July 1, 1994.

In the case of People ex rel. Pearsall v. the Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used

for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt. In the case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983), the Court held that property which was vacant and not used, did not qualify for the statutory exemption as property used exclusively for religious purposes, regardless of the owner's intent. While the applicant owned the garage on this parcel during the period January 1, 1994 through July 1, 1994, I conclude that since it was vacant and not used, it did not qualify for exemption during that period.

The applicant's attorney alleges that the use of the residence and garage on this parcel by Carla Oliver and her children during the period July 2, 1994, through December 31, 1994 was a charitable use.

35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

From the foregoing, it is clear that for a property to qualify for exemption as being charitable it must be owned by a charitable organization and used for charitable purposes. The page of the Articles of Incorporation of the applicant, which sets forth the purposes of the applicant, was unfortunately not part of the exhibit presented at the hearing. It is well settled in Illinois that the character and purpose for which a corporation is organized, must be ascertained from its Articles of Incorporation. Rotary International v. Paschen, 14 Ill.2d 480 (1958); and Oak Park Club v. Lindheimer, 369 Ill. 462 (1938).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an

organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. The evidence in this matter established that Carla Oliver was a long time member of the applicant and her children attended Sunday School there before they found themselves in need of a place to live. In addition they were the only people who have lived in this house. Consequently, the applicant has failed to establish that the benefits derived are for an indefinite number of persons, since the only persons who have been allowed to live in this residence are long time church members. While Carla Oliver and her children paid no rent to live in the house, they were required to pay all of the utilities. No evidence was offered that the applicant would have waived or reduced the utility payments in a case of need. Based on the foregoing facts, I Conclude that the applicant failed to meet guidelines 1, 4, and 5 of the above stated guidelines. I therefore conclude that the applicant has failed to establish that it is a charitable organization.

During the time that Carla Oliver and her children lived in the house, the applicant did not use this residence for a Sunday School class.

After Mrs. Oliver and her children moved out of this residence at the end of February, 1995, the house has again been used for Sunday School. Also the applicant has been parking the church van in the garage since that time.

Based on the foregoing, I recommend that Warren County Parcel Index No. 07-359-006-00 and the house thereon, be exempt for 50% of the 1994 assessment year representing the period January 1, 1994, through July 1, 1994, which was the portion of the 1994 assessment year when this parcel was used for religious purposes.

I also recommend that said parcel and the house thereon remain on the tax rolls for 50% of the 1994 assessment year, representing the period from July 2, 1994, through December 31,

1994, when said parcel was used for residential purposes, and that said parcel be assessed to the applicant herein, for that period.

In addition, I recommend that the garage on this parcel and the land on which it is located, remain on the tax rolls and be assessed to the applicant for the 1994 assessment year.

I would further recommend that the applicant again apply for exemption of this parcel for the assessment years after Mrs. Oliver and her children moved out, as it would appear that this parcel was again used for religious purposes.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 26, 1998